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FILED
APR 21 1954
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 707

HAROLD MAXWELL, ET AL., *Petitioners*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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April 21, 1954

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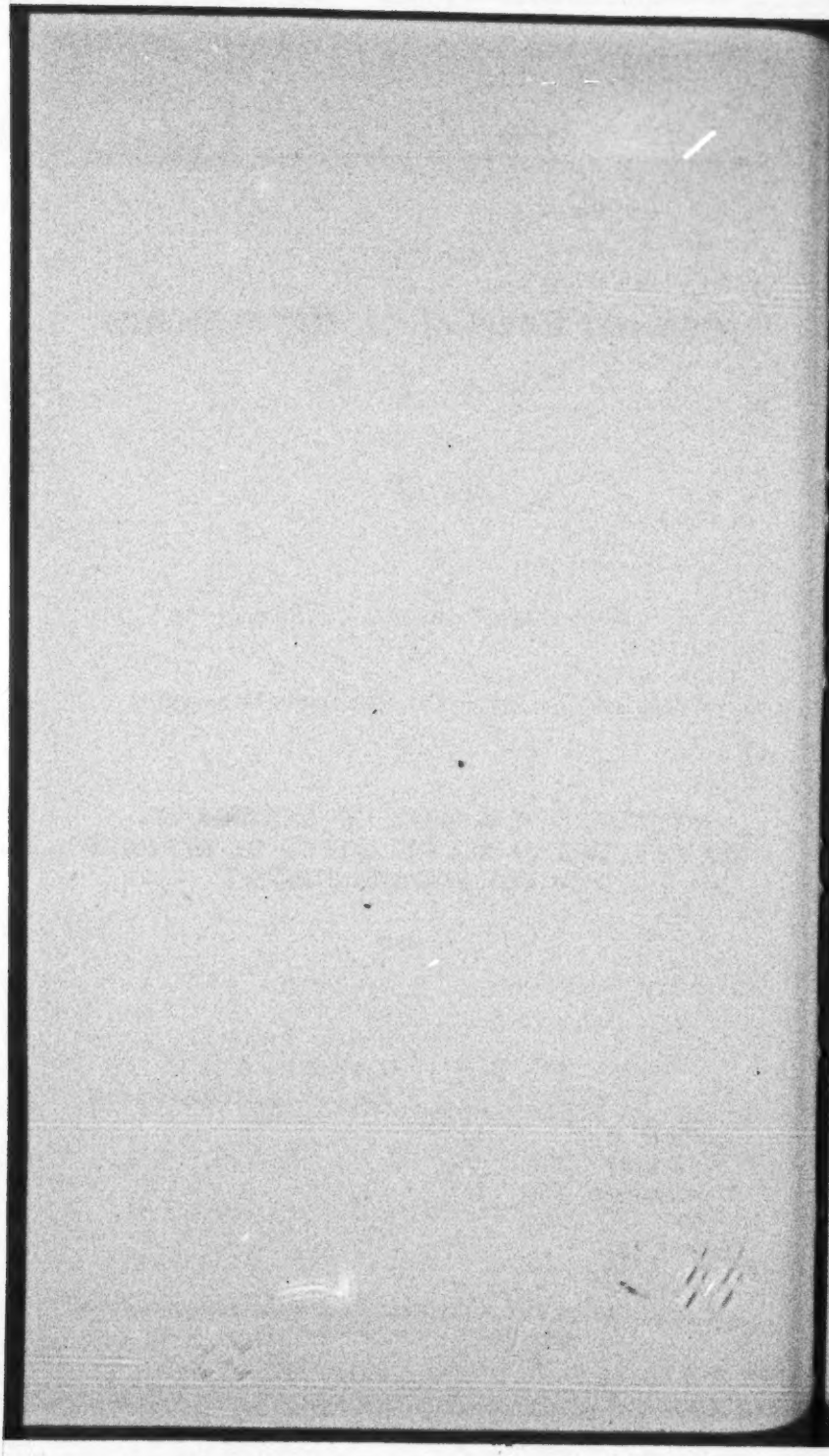

TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statement of the Facts	3
Reasons for Granting the Writ	8
Appendix	24

TABLE OF CASES CITED

Alexander v. Commissioner, 190 F. (2d) 753, 40 A.F.T.R. 1052 ..... 8, 11

Alton v. Kelm, Collector (U.S.D.C. Minn.) ¶72,581 P-H Fed. 1953 21

Bologna, et al v. Donnelly (U.S.D.C., E.D. La.) ¶72,550 P-H Fed. 1953 21

Brodhead, Commissioner v., 18 T.C. 726, app. C.A. 9, decided March 10, 1954, ¶72,431 P-H Fed. 1954 ..8, 14, 20

Clifford, Jr., Helvering v., 309 U.S. 331, 23 A.F.T.R. 1077 14

Culbertson v. Commissioner, 337 U.S. 733, 37 A.F.T.R. 1391 ..... 11, 13, 22

Cunningham, John J., ¶51,242 P-H Memo T.C. 21

Eaton, Commissioner, ¶52,221 P-H Memo T.C., app. C.A. 9, decided March 10, 1954, ¶72,432 P-H Fed. 1954 ..... 8, 14

Economos v. Commissioner, 167 F. (2d) 165, 36 A.F.T.R. 926 13

Eisenmann, Louis R., 17 T.C. 1426 21

Feldman v. Commissioner, 186 F. (2d) 87, 40 A.F.T.R. 39 13

Ford, Clarence B., 19 T.C. 200 21

Funai v. Commissioner, 181 F. (2d) 890, 39 A.F.T.R. 429 13

Greenberger v. Commissioner, 177 F. (2d) 990, 38 A.F.T.R. 1008 21

Hash v. Commissioner, 152 F. (2d) 722, 34 A.F.T.R. 640 (1945) 13

Hoffman v. United States (U.S.D.C. Ore.) ¶72,412 P-H Fed. 1954 21

Klein v. Riddell, Collector (U.S.D.C., S.D. Cal.) ¶72,511 P-H Fed. 1953 21

Page

Lusthaus v. Commissioner, 327 U.S. 293, 34 A.F.T.R. 806 22
Maiatico v. Commissioner (C.A.D.C. 1950), 183 F. (2d) 836, 39 A.F.T.R. 804 21
Marcus v. Commissioner, (C.A. 5, 1953) 201 F. (2d) 850 20
Mauritz, Scofield, Collector, v., (C.A. 5) 206 F. (2d) 135 21
Miller v. Commissioner (C.A. 6) 203 F. (2d) 350 ....8, 21
Miller, Henry G., ¶52,208 P-H Memo T.C. 21
Moore v. Commissioner, 170 F. (2d) 191, 37 A.F.T.R. 335 (1948) 13
Osbrink, Mary E., et al v. United States (U.S.D.C., S.D. Cal.) ¶72,678 P-H Fed. 1952 21
Parks, Chas. C., ¶52,228 P-H Memo T. C. 21
Roughan v. Commissioner, 198 F. (2d) 253, 42 A.F.T.R. 359 13
Schroeder, Juliana, ¶52,000 P-H Memo T.C. 21
Seabrook v. Commissioner, (C.A. 5, 1952) 196 F. (2d) 322, 41 A.F.T.R. 1199 .....8, 11, 21
Shainberg, Herbert, ¶53,068 P-H Memo. T.C. 21
Solomon v. Commissioner, 204 F. (2d) 562 16
Stanback v. Robertson, 183 F. (2d) 889, 39 A.F.T.R. 812 13
Stern, Theodore D., 15 T.C. 521 21
Sultan v. Commissioner, 18 T.C. 715, app. C.A. 9, decided March 10, 1954 ¶72,430 P-H Fed. 1954 .....8, 14
Tower, Commissioner v., 327 U.S. 280 22
Visintainer v. Commissioner (C.A. 10, 1951) 187 F. (2d) 519, 40 A.F.T.R. 297 .....8, 11, 21
Wilson v. Commissioner, 161 F. (2d) 556, 35 A.F.T.R. 1248 (1947) 13

STATUTES AND AUTHORITIES CITED

C. B. 1952-1, p. 111, 118, Mim. 6767 .....15, 20
Prentice-Hall Federal Tax Service, Vol. 1, 1954, ¶15,506 16
Revenue Act of 1951, Section 340(a) 17
Senate Finance Committee Report No. 781, 82d Congress, First Session, pages 38-40 17
Internal Revenue Code, §§ 181, 182(c), 3797(a)(2) 24

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above-entitled cause December 9, 1953.

OPINIONS BELOW

The Opinion of the Court of Appeals (R. 74) is reported at 208 F. (2d) 542. The Memorandum Findings of Fact and Opinion of the Tax Court of the United States are not officially reported, but appear in the record at pages 2 to 15, and are unofficially reported at ¶53,032 P-H Memo. T.C.

JURISDICTION

The jurisdiction of the Supreme Court to review this case rests upon 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

I

Harold Maxwell, Sr., and Raymond Maxwell, Sr., were brothers who, prior to December 1, 1941, operated as equal partners a wholesale grocery business in which capital was an important income-producing factor. November 29, 1941, the brothers each executed deeds of gift to their wives, as trustees for minor children, conveying undivided interests in the real estate, inventories, accounts receivable, and other capital assets of the partnership. On the same date the brothers sold undivided interests in the partnership to the trusts for the benefit of the minor children.

Is the income from the property interests transferred taxable to the former owners or to the trusts which owned the property during the years involved? The Courts below held the income is taxable to the former owners.

II

Where real estate and other capital assets are material income-producing factors of a business, is it proper to tax the income therefrom to persons who previously owned the property but who have given it or sold it to trusts for minor children? The Courts below held that the income is taxable to the former owners and not to the trusts who owned the property during the years involved.

III

May trusts for minor children be recognized as partners, where the capital interest of the trusts is acquired by gift from parents? Or must "new" capital be contributed by the trusts in order to have the trusts recognized for tax purposes?

STATEMENT OF THE FACTS

This case involves deficiencies in income tax for the years 1943 to 1947, inclusive, asserted against Harold Maxwell, Sr. and his wife, Julia Murvin Maxwell, and the Estate of Raymond Maxwell, Sr., in the total amount of $245,855.33. However, in the event the Commissioner is sustained, there will be substantial overpayments refundable to the trusts for the children.

Harold Maxwell, Sr., and Raymond Maxwell, Sr., were brothers who entered the wholesale grocery and hardware business in New Bern, North Carolina, in 1918. (R. 20) Prior to November 29, 1941, the business was operated as a partnership composed of Harold Maxwell, Sr., and Raymond Maxwell, Sr. (R. 3, 23) The company maintains a large store and warehouse facilities in New Bern, North Carolina, where it receives and stores merchandise. During the years 1942 to 1947, it distributed its merchandise over 20 counties in eastern North Carolina. The company distributes the groceries and hardware by truck to retail outlets in eastern North Carolina. It employed during the period here involved about 26 persons. (R. 21) A large amount of capital is required in the business to provide the necessary buildings and warehouse facilities; to carry the large amount of merchandise to serve the retail outlets and to carry retail customers' accounts receivable. Consequently, capital is a material income-producing factor in the operation of the business. (R. 3, 20-23)

Harold Maxwell, Sr., and his wife, Julia Murvin Maxwell, have two children, Harold, Jr., born August 19, 1922, and Julia Murvin born February 27, 1925. (R. 2) Raymond Maxwell, Sr., now deceased, and his wife, Mary Charles Maxwell, have three children, Raymond, Jr., born July 11, 1929, Kathryn Miller born May 9, 1931, and Mary Gary born December 31, 1934. (R. 3)

For a period of two years or longer prior to November 29, 1941, Harold Maxwell, Sr. and his brother, Raymond,

discussed together the idea of giving each of their children an interest in the partnership business in order to provide for their future financial security, as well as to interest them in carrying on the business. (R. 3) They discussed the plan with their attorney, who prepared deeds of gift and deeds of conveyance to be executed by Harold Maxwell, Sr., and Raymond Maxwell, Sr., and their respective wives. (R. 26) The deeds of gift and deeds of conveyance were executed on November 29, 1941, whereby Harold transferred to a trustee, for the benefit of his two children, two-thirds of his one-half interest in the partnership, Maxwell Company, and caused said trustee to become a member of the partnership in her representative capacity. (Exs. 1-A, 2-B, 6-F, 7-G) In the case of Raymond Maxwell, Sr., he transferred to a trustee, for the benefit of his three children, three-fourths of his one-half interest in the partnership, Maxwell Company, and caused said trustee to become a member of the partnership in her representative capacity. (Exs. 3-C, 4-D, 5-E, 8-H, 9-I, 10-J) Copy of the deed of gift for the benefit of Mary Gary Maxwell is printed in the Record at R. 62.

The deeds specifically conveyed interests in three named tracts or parcels of land, five lots, and a portion of another lot, together with the buildings and improvements thereon situate. The deeds also conveyed interests in all goods, wares and merchandise, motor trucks, trailers, and other delivery equipment, office furniture and equipment, appliances and fixtures, all accounts, insurance and good will. (R. 63)

Each of the five deeds conveying the respective interest sold provided that the Trustee of each trust should execute and deliver a promissory note in the amount of the consideration to be paid by each trust, bearing interest at the rate of three per cent per annum and payable one year after date. The notes were all dated November 29, 1941. The interest and principal of each of the notes was fully dis-

charged during the year 1945 out of the earnings and profits of the Maxwell Company distributed to the respective trusts. Both Harold Maxwell, Sr., and Raymond Maxwell, Sr. returned as income the interest received from the respective trustees in the year of its receipt. (R. 4) The five deeds of gift differed in form and content only as to names and amounts. The same situation applies to the five deeds of sale. The deeds of sale provided that the additional interest acquired by purchase was to be subject to all of the provisions contained in the deeds of gift in trust. (R. 4, 5)

The deeds of gift in trust provided that the trusts should terminate on December 31, 1955, at which time the trustees were directed to pay the undistributed income and corpus to the primary beneficiary, if living, and, if deceased, to the surviving child or children of the respective donors. (R. 4) Each of the donors filed Federal and state gift tax returns reporting the gifts of the partnership interest. A gift tax was paid to the state but, because of the allowable statutory exemption, no Federal gift tax was payable. The deeds of gift and deeds of conveyance were recorded with the Register of Deeds of Craven County, North Carolina. (R. 8)

Each trust kept separate books of account showing all of the income received and all expenses and disbursements, distributions and investments of income. After the receipt by the trustees of partnership distributions by Maxwell Company, the trustees paid the Federal and state income taxes due, the interest due on the notes and installment payments on the principal.

The balance of the proceeds was invested in United States Government bonds. Any odd remaining cash balance was deposited in savings accounts for the individual trusts. All bonds purchased and bank pass books remained in the exclusive custody and possession of the trustees. (R. 10)

No funds of the trust estates have been used by the

trustees for the maintenance, education or support of any of the beneficiaries. The only cash distribution made by the trustees to any of the beneficiaries during the taxable years here involved was the amount of $2,500 paid to Harold Maxwell, Jr., in 1947. No part of the income of any of the trusts has found its way back to either of the settlors of the respective trusts. Except for such portions of the trust income used to discharge the promissory notes and accrued interest thereon, no trust income has been loaned or invested in Maxwell Company. (R. 11) The instruments creating the trusts provided that the old partners' consent to the admission of the trustees of the respective trusts as members of the partnership, Maxwell Company, and provided: (Exs. 1-A to 5-E, inclusive)

> "* * * My partner, [Harold Maxwell or Raymond Maxwell, as the case might be], consents to the change in the partnership effective by this conveyance and agrees for said Trustee, or her duly qualified successor, to participate in her representative capacity as a member in said partnership until the same is dissolved by mutual consent, or in some other manner."

Harold Maxwell, Jr., began working in the business of Maxwell Company in 1936, when he was 14 years of age. At that time he would work for the business in the morning before going to school, after school, on Saturdays and during summer vacations. Prior to the time Harold Maxwell, Jr., went to college in 1940, he would perform services for the business by operating a hand truck, assisting in moving freight, working as a helper on delivery trucks, sweeping floors, helping to take inventory and acting as errand boy. On boat days he would help unload the boats, run the elevator from the first floor to the second floor in order to store merchandise on the second floor. When he went to college in 1940, he worked for the business during summer vacations as a salesman. This required him to travel over the area covered by the business selling mer-

chandise. Harold Maxwell, Jr., thereafter entered military service in April, 1943, and returned from the service in May, 1946. He returned to the business after his discharge from military service and when he completed his college education. Since completing his education he has worked permanently in the business. He has performed the services of a salesman and has acted as assistant manager of the business since August 1, 1948. (R. 27-28, 53-55)

Raymond Maxwell, Jr., has worked in the business since he was 14 years of age. While in school he worked before school hours and after school hours, on Saturday and during summer vacations. Prior to going to college in 1947, Raymond Maxwell, Jr., would operate a hand truck, assist in moving freight, run the elevator, sweep floors, act as errand boy and go with delivery trucks and assist in delivering merchandise to the retail stores. He also assisted in loading the trucks for distribution to retail stores early in the morning. While he was in college from 1947 to 1951, he worked in the business during the summer months as a salesman. (R. 28, 29)

Raymond Maxwell, Sr., died January 11, 1949, and under the laws of North Carolina, the partnership was dissolved. The business was continued in corporate form. The respective partnership interests were exchanged for stock in the new corporation. By order of the Superior Court of Craven County, North Carolina, Mary Charles Maxwell, as administratrix of the Estate of Raymond Maxwell, Sr., Deceased, was authorized to exchange the partnership interest of the decedent for stock of the new corporation. (R. 11-12, 35)

The Courts below affirmed the Commissioner's determination that the entire income of Maxwell Company is taxable to the two original partners.

REASONS FOR GRANTING THE WRIT

I.

The decision below is in conflict with the following decisions:

1. Sixth Circuit: *Miller* v. *Commissioner*, 203 F. (2d), 350. The opinion below in the case at bar recognizes this conflict.

2. Fifth Circuit: *Seabrook* v. *Commissioner*, 196 F. (2d), 322, 41 A. F. T. R. 1199; *Alexander* v. *Commissioner*, 190 F. (2d) 753, 40 A. F. T. R. 1052.

3. Tenth Circuit: *Visintainer* v. *Commissioner*, 187 F. (2d) 519, 40 A. F. T. R. 297.

4. Ninth Circuit: *Commissioner* v. *Sultan, Commissioner* v. *Brodhead, Commissioner* v. *Eaton.* These three cases were decided *per curiam* March 10, 1954, and are reported at ¶ 72,430 P-H Fed. 1954, ¶ 72,431 P-H Fed. 1954, and ¶ 72,432 P-H Fed. 1954, respectively.

In each of the above cases, the various circuits specifically held that income from property given to children, or trusts for children, is taxable to the children or the trusts and not to the grantors. The cases in the Fifth, Sixth and Ninth Circuits involved gifts of interests in a going mercantile business. In the case at bar, the same facts are presented.

The Fourth Circuit recognizes the conflict with the Sixth Circuit in *Miller* v. *Commissioner*,[1] stating (R. 77):

> "We are not insensible of the opinion in *Miller* v. *Commissioner*, 203 F. (2d) 350, cited by petitioners, wherein is recognized the economic validity of a desire to give one's children an interest in the business and an incentive to engage therein."

[1] 203 F. (2d) 350.

The Fourth Circuit then attempts to distinguish the cases on an immaterial difference in fact. In the *Miller* case, Sam H. Miller and his wife, Florence R. Miller each owned a $60,000 interest in a drug store partnership. The firm needed new capital to get a new location. W. R. Miller (Sam H. Miller's father) agreed to put up $15,000 if each of the three children of Sam's and Florence's marriage were made equal partners with them. The three children were William R. Miller II, aged 10; Samuel H. Miller, Jr., aged 9; and Barbara J. Miller, aged 7.[3] This condition was met by making twelve trusts for the three children. Sam and Florence Miller were the trustees for all trusts. Sam and Florence Miller transferred parts of their partnership interests to the trusts until each child and each parent owned a 20 per cent interest in the business.

The Commissioner and Judge LeMire of the Tax Court held in the first *Miller* case, that the entire income was taxable to Sam H. Miller.[3] The Sixth Circuit reversed, holding that Florence R. Miller was a partner and remanding the case to the Tax Court to make a finding as to whether there was an intention of the parents to transfer a real partnership interest to the children.[4] Upon remand, Judge LeMire of the Tax Court, (who also decided the case at bar) held, as in the case at bar, that the entire income was taxable to the parents.[5] The Sixth Circuit reversed this later finding, stating:

> "If the Millers executed these trust instruments for the benefit of their children, for their financial security, and to give them an interest in the drug business and an incentive to engage therein, these trusts are valid, and it follows that the Millers thereby intended

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[3] Facts ascertained from first Tax Court *Miller* partnership decision, ¶ 49,001 P-H Memo T.C.

[3] ¶ 49,001 P-H Memo T.C.

[4] 183 F. (2d) 776, 40 A.F.T.R. 13.

[5] ¶ 51,217 P-H Memo. T.C.

to form a real business partnership with the children, or with themselves as trustees for the children. We are of the opinion that the evidence clearly discloses that such was their intent, and that the proofs being unchallenged by contrary proofs, or by destructive analysis, there is no substantial evidence to support a contrary finding."

In the case at bar, the Court below attempts to distinguish the *Miller* case on the ground that the Miller trusts involved the investment of "new outside capital." This is a distinction without a difference because the grandfather contributed only $15,000 to a business which already had a value of $120,000. After the gifts, each parent's capital account was $27,000 (a 20 per cent interest in the business), as compared with a capital account of $60,000 (a 50 per cent interest) before the gifts.

The reference to "new outside capital", in attempting to distinguish the *Miller* case, emphasizes the Fourth Circuit's position that it will not recognize partnerships where gift capital is involved.

The Fourth Circuit in this case also holds that it was not contemplated that the Maxwells' daughters would become active in the business. There is as much evidence that the Maxwells' daughters would become active in the business as there is that the Millers' seven-year old daughter would become active in the business. In the case at bar, the older Maxwell boys worked in the business during vacations and after school. At the time of the trial, the Maxwell boy who had finished school was employed full-time in the business as assistant manager.

The case here involved is much stronger for the petitioners than the *Miller* case. In the *Miller* case, the parents could continue to use the corpus and income of the trusts in the business exactly as though they were the owners, without the right of the beneficiaries to receive any distribution until the death of the father. In addition, the parents could take for themselves all of the in-

come from the trusts until their termination for their compensation as trustees.

In the case at bar, the entire amount of each trusts' share of the earnings was distributed to the trustees and invested for the beneficiaries. When a corporation succeeded the partnership, each trust exchanged its interest in the partnership for the same proportionate ownership of corporate stock. In the *Culbertson*[6] case, this Court stated: (p. 747)

> "Whether he (a donee) is free to, and does, enjoy the fruits of the partnership is strongly indicative of the reality of his participation in the enterprise."

In the *Seabrook*[7] case, a father gave his son and daughter interests in a hardware business. The son went to war shortly after the creation of the partnership. The daughter gave birth to a child a few weeks after the creation of the partnership and during the period involved was predominantly busy taking care of the child. The Fifth Circuit cited the *Culbertson* case as authority for holding the partnership valid because the children were the owners of capital in the business. See also *Alexander* v. *Commissioner*, 190 F. (2d) 753, 40 A. F. T. R. 1052. In the case at bar, the transfers to the trusts for the children were as complete as it is humanly possible to make them. All income was distributed in accordance with the ownership. The interests in the partnership are now represented by ownership of stock in the successor corporation.

In the *Visintainer*[8] case, the taxpayer made gifts of 500 ewes with lambs to each of his four minor children. In each instance, the sheep included in the gift were branded with the initial of the first name of the child to whom the

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[6] 337 U.S. 733, 37 A.F.T.R. 1391.

[7] 196 F. (2d) 822, 41 A.F.T.R. 1199 (C.A. 5, 1952).

[8] 187 F. (2d) 519, 40 A.F.T.R. 297, (C.A. 10, 1951).

gift was made. The sheep involved were not separated and removed from the ranch. The taxpayer managed the ranch, including the sale of sheep and the sale of wool. The net proceeds from the gifts were set aside for each child. Judge LeMire of the Tax Court (who also decided the case at bar) held that the income from the sheep given the children was taxable to the father.[9] The Tenth Circuit reversed, stating:

> "* * * But membership in the immediate family alone and without more is no ground for disregarding for income tax purposes gifts of property made by a father to his children. Henson v. Commissioner 174 F. (2d) 846, [37 AFTR 1522]; Early v. Atkinson, 175 F. (2d) 118 [38 AFTR 46]. And the test to be applied in a case of this kind is whether good faith, bona fide gifts were made to the children or the device was resorted to as a sham for evading income tax. Greenberger v. Commissioner, 177 F. (2d) 990, [38 AFTR 1008].
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> * * * * *
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> "* * * To say that the gifts were ineffective for income tax purposes would be the equivalent of holding that a father is disenabled to make a gift to his minor child which is effective in point of tax consequences if he retains or subsequently exercises any control or management of the property or the fruits therefrom solely for the benefit of the estate of the child. Neither the letter nor the spirit of revenue legislation extends its reach that far. The gifts were effective for income tax purposes, and the taxpayer was not liable for tax on the gain derived from the property given to the children."

We contend there is no possible way to reconcile the reasoning of the Fifth, Sixth and Tenth Circuits in the cases just cited, with the reasoning of the Fourth Circuit in the case at bar. The Fourth Circuit simply will not rec-

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[9] 18 T.C. 805.

ognize gift capital as establishing a bona fide partnership.[10] For instance, in the *Feldman* case,[11] relied upon by the Tax Court in deciding the case at bar, the Fourth Circuit discussed the *Culbertson* case, and held "Mere legal title to capital acquired by gift is alone insufficient" in order to have a partnership recognized. It stated that the Tax Court in the *Feldman* case "found that a contribution had been made neither of original capital nor vital services" so the Tax Court had to be affirmed. The Court reasoned that, if the business continued in the same manner as before the gift, the interest represented by the gift could not be recognized.

The Fourth Circuit was obviously in error in the *Feldman* case because, in the *Culbertson* case, this Court specifically held that gift capital and the income therefrom should in proper cases be considered the property of the donee for tax, as well as for general law purposes.

On the other hand, if new "outside capital" is invested in a business, the Fourth Circuit will recognize the partnership. *Funai* v. *Commissioner*.[12] The only conclusion from the cases mentioned is that the Fourth Circuit will recognize a family partnership involving ownership of capital *only* if new outside capital is invested. This means it totally disregards the rules of the *Culbertson* case.

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[10] In addition to the case at bar, the Fourth Circuit has reached a similar conclusion in:

Feldman v. *Commissioner*, 186 F. (2d) 87, 40 A.F.T.R. 39.
Roughan v. *Commissioner*, 198 F. (2d) 253, 42 A.F.T.R. 359.
Stanback v. *Robertson*, 183 F. (2d) 889, 39 A.F.T.R. 812.
Wilson v. *Commissioner*, 161 F. (2d) 556, 35 A.F.T.R. 1248 (1947).
Economos v. *Commissioner*, 167 F. (2d) 165, 36 A.F.T.R. 926.
Moore v. *Commissioner*, 170 F. (2d) 191, 37 A.F.T.R. 335 (1948).
Hash v. *Commissioner*, 152 F. (2d) 722, 34 A.F.T.R. 640 (1945).

[11] 186 F. (2d) 87, 40 A.F.T.R. 39.

[12] 181 F. (2d) 890, 39 A.F.T.R. 429.

As the law now stands, a taxpayer who lives within the Fourth Circuit, cannot make a gift or sale to his children of an interest in a partnership business and have it recognized for tax purposes. Generally speaking, if he lives in any other circuit, such gifts or sales will be recognized. This Court should resolve this conflict and inequity.

Three *per curiam* decisions of the Ninth Circuit rendered March 10, 1954, in *Commissioner* v. *Sultan*, ¶ 72,430 P-H Fed. 1954, *Commissioner* v. *Brodhead*, ¶ 72,431 P-H Fed. 1954, and *Commissioner* v. *Eaton*, ¶ 72,432 P-H Fed. 1954, involve the same questions, i.e:

(1) Should a trust created by gifts of a parent be recognized as special partners in a mercantile business conducted by the father-donor, and (2) does the doctrine of the *Clifford*[13] case support the taxation of trust income to the settlor of the trust. Judge Arundell of the Tax Court decided all three cases in favor of the taxpayers.[14] In the *Sultan* case, five Tax Court judges, including Judge LeMire, who decided the case at bar, dissented. The Commissioner appealed the three cases to the Ninth Circuit and all were affirmed, *per curiam*, for the reasons stated by Judge Arundell.

There is no possible way to distinguish these three cases from the case at bar.

In the case at bar, the decision would obviously have been otherwise had the case been decided by Judge Arundell, instead of by Judge LeMire. Likewise, if these taxpayers resided in the Ninth Circuit, they would have prevailed.

Under the age-old precedent of resolving conflicts, this Court should grant certiorari in the case at bar.

II

The decision below is in conflict with this Court's decision in the *Culbertson* case by applying the "original capital"

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[13] *Helvering* v. *Clifford Jr.*, 309 U. S. 331, 23 A.F.T.R. 1077.

[14] *Sultan*, 18 T.C. 715, *Brodhead* 18 T.C. 726, *Eaton* ¶ 52,221 P-H Memo T.C.

rule in the disposition of the case at bar. The Court below states: "It cannot be overlooked, however, that no new capital was added to the business." It then discusses the *Culbertson* decision, stating that this Court held that "vital services" and "original capital" factors are not conclusive. However, it reaches the conclusion that, in this case, there was no economic reality or economic purpose in the partnership. The only possible conclusion to be drawn from the Fourth Circuit opinion is that effective gifts to children of interests in family partnerships are absolutely impossible. The reason is that minor children cannot be expected to furnish either "business reality or economic purpose" to a business, other than to carry out the parents' desire to provide economic security for the children.

The position of the Fourth Circuit is directly contrary to the published position of the Treasury as set forth in Mim. 6767,[18] which sets forth the Bureau's position in the light of the *Culbertson* case, with respect to family partnerships in which capital is a material income-producing factor. This Mim. was issued February 19, 1952, the day after this case was tried before the Tax Court. The Mim. states (p. 117):

> "In any event, the Bureau does not adhere to the position that there is an absence of required business purpose if a gift or other antecedent family transaction does not benefit the business in some way. An individual is entitled freely to dispose of his or her property so far as the income tax law is concerned, and may give or sell interests in a business to members of his family * * *. There is no requirement that intrafamily gifts be motivated by a business purpose, which frequently they would not have, before the donee may be recognized as the owner, for income tax purposes of the property given to him. * * *".

The Fourth Circuit does admit that its position is in conflict with that of the Sixth Circuit which recognizes the

[18] C.B. 1952-1, p. 111.

economic validity of a desire to give one's children an interest in the business. (R. 77) To support the Fourth Circuit's position is to ignore the fact that most of us struggle through our lives primarily to provide economic security for our loved ones. Actions which accomplish this objective are among the most valid of all human actions.

The Fourth Circuit in the case at bar says (R. 77):

> "Then, too, a trustee as a partner in a mercantile partnership is something of a legal anomaly".

Such a position is contrary to established law. Trusts were recognized as partners in the *Miller, Sultan, Brodhead* and *Eaton* cases listed above. ¶15,506 P-H Federal Tax Service, 1954, states that it is well established that trusts can be partners and cites numerous decisions in support of its statement. The Treasury Department specifically states in Mim. 6767 (p. 118) that trusts may be recognized as partners.[16] The Fourth Circuit is in error when it indicates it is irregular or abnormal for a trust to be a partner.

The Court below stated that the case at bar is controlled by the Fourth Circuit decision in *Solomon* v. *Commissioner*.[17] The facts in the *Solomon* case show that (a) the trustee was bound to invest the trust funds, capital and income in the partnership, (b) no distributions could be made to beneficiaries for ten years, (c) the trustee was excluded from partnership management, (d) the donor signed the partnership agreement as agent for his children and the trustee did not sign the agreement, and (e) there was no evidence that the daughters were told of the arrangement, nor that the other partners accepted the trust as a partner. None of the foregoing facts exist in the case at bar.

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[16] C.B. 1952-1, p. 111.

[17] 204 F. (2d) 562.

III

The decision below is in conflict with Congressional understanding of the law.

It is the petitioners' position that where the parties intend to carry on business as a partnership that gift capital meets the requirement that a member contribute either capital or services. It is a fundamental concept of income taxation that income from property is attributable to the owner of the property. This law has always been followed by the courts with respect to securities and real property. However, where interests in partnerships have been given to children or other family members, the court decisions have not been uniform. In order to clarify the confusion, Congress amended Section 3797 (a) (2), Internal Revenue Code, when it enacted the Revenue Act of 1951. Section 340 (a) of that Act reads:

> "Sec. 340. FAMILY PARTNERSHIPS
>
> "(a) *Definition of Partner.*—Section 3797 (a) (2) is hereby amended by adding at the end thereof the following: 'A person shall be recognized as a partner for income tax purposes if he owns a capital interest in a partnership in which capital is a material income-producing factor, whether or not such interest was derived by purchase or gift from any other person.'"

The amendments provide that they shall be applicable with respect to taxable years beginning after December 31, 1950, and state that no inferences are to be drawn from the fact that they are not made applicable with respect to taxable years beginning before January 1, 1951. However, the legislative history of the 1951 amendments indicates that the amendments are merely a clarification of existing law. Senate Finance Committee Report No. 781, 82nd Congress, 1st Session, pages 38 to 40, states:

> "Section 339 of your committee's bill is intended to harmonize the rules governing interests in the so-called family partnership with those generally applicable to

other forms of property or business. Two principles governing attribution of income have long been accepted as basic: (1) income from property is attributable to the owner of the property; (2) income from personal services is attributable to the person rendering the services. There is no reason for applying different principles to partnership income. If an individual makes a bona fide gift of real estate, or of a share of corporate stock, the rent or dividend income is taxable to the donee. Your committee's amendment makes it clear that, however the owner of a partnership interest may have acquired such interest, the income is taxable to the owner, if he is the real owner. If the ownership is real, it does not matter what motivated the transfer to him or whether the business benefited from the entrance of the new partner.

"Although there is no basis under existing statutes for any different treatment of partnership interests, some decisions in this field have ignored the principle that income from property is to be taxed to the owner of the property. Many court decisions since the decision of the Supreme Court in *Commissioner* v. *Culbertson*, (337 U. S. 733) have held invalid for tax purposes family partnerships which arose by virtue of a gift of a partnership interest from one member of a family to another, where the donee performed no vital services for the partnership. Some of these cases apparently proceed upon the theory that a partnership cannot be valid for tax purposes unless the intra-family gift of capital is motivated by a desire to benefit the partnership business. Others seem to assume that a gift of a partnership interest is not complete because the donor contemplates the continued participation in the business of the donated capital. However, the frequency with which the Tax Court, since the *Culbertson* decision has held invalid family partnerships based upon donations of capital, would seem to indicate that, although the opinions often refer to 'intention,' 'business purpose,' 'reality,' and 'control,' they have in practical effect reached results which suggest that an intra-family gift of a partnership interest, where the donee performs no substantial services, will not usually

be the basis of a valid partnership for tax purposes. We are informed that the settlement of many cases in the field is being held up by the reliance of the field offices of the Bureau of Internal Revenue upon some such theory. Whether or not the opinion of the Supreme Court in *Commissioner* v. *Tower* (327 U. S. 280) and the opinion of the Supreme Court in *Commissioner* v. *Culbertson* (337 U. S. 733), which attempted to explain the *Tower* decision, afford any justification for the confusion is not material—the confusion exists.

"The amendment leaves the Commissioner and the courts free to inquire in any case whether the donee or purchaser actually owns the interest in the partnership which the transferor purports to have given or sold him. Cases will arise where the gift or sale is a mere sham. Other cases will arise where the transferor retains so many of the incidents of ownership that he will continue to be recognized as a substantial owner of the interest which he purports to have given away, as was held by the Supreme Court in an analogous trust situation involved in the case of *Helvering* v. *Clifford* (309 U. S. 351). The same standards apply in determining the bona fides of alleged family partnerships as in determining the bona fides of other transactions between family members. Transactions between persons in a close family group, whether or not involving partnership interests, afford much opportunity for deception and should be subject to close scrutiny. All the facts and circumstances at the time of the purported gift and during the periods preceding and following it may be taken into consideration in determining the bona fides or lack of bona fides of a purported gift or sale.

"Not every restriction upon the complete and unfettered control by the donee of the property donated will be indicative of sham in the transaction. Contractual restrictions may be of the character incident to the normal relationships among partners. Substantial powers may be retained by the transferor as a managing partner or in any other fiduciary capacity which, when considered in the light of all the circumstances, will not indicate any lack of true ownership in the

transferee. In weighing the effect of a retention of any power upon the bona fides of a purported gift or sale, a power exercisable for the benefit of others must be distinguished from a power vested in the transferor for his own benefit."

The foregoing legislative history thus shows that where capital is a material income-producing factor in a partnership, the income is taxable to the owner of the partnership interest and such was the law prior to the Revenue Act of 1951. The case of *Thomas H. Brodhead, et al,* 18 T. C., 726, affirmed, *per curiam,* by the Ninth Circuit March 10, 1954, supports this view and states (p. 735):

> "The attribution of income from property to the owner of the property was emphasized by the tax committees of the House of Representatives and of the Senate in their consideration of the family partnership provisions that became section 340 of the Revenue Act of 1951. It was the expressed view of the committees that partnership income, where capital is a material income-producing factor, should be taxed to the partners if they were the real owners of their interests regardless of how the interests may have been acquired.
>
> • • •
>
> "The family partnership provisions enacted as section 340 of the Revenue Act of 1951 are not retroactive to the years involved in these proceedings. Nevertheless, the basic principle of taxing income from property to the owner of the property was the law in the earlier years as fully as it is today. A proper appraisal of the evidence is convincing that the trusts in these proceedings were the owners of the property held by them. • • •"

See, also, *Marcus* v. *Commissioner,* (C. A. 5, 1953), 201 F. (2d) 850, and Mim. 6767, C.B. 1952-1, p. 111. Since the *Culbertson* decision, many decided cases hold that gift capital is sufficient to require a partner to be recognized or to require the income resulting from the gift capital to be

taxed to the owner or donee of the gift. They include *Miller* v. *Commissioner*, (C.A. 6) 203 F. (2d) 350, *Visintainer* v. *Commissioner*, (C.A. 10) 187 F. (2d) 519, 40 A.F.T.R. 297; *Seabrook* v. *Commissioner*, (C.A. 5) 196 F. (2d) 322, 41 A.F.T.R. 1199. See also *Maiatico* v. *Commissioner*, (C.A.D.C. 1950), 183 F. (2d) 836, 39 A.F.T.R. 804; *Greenberger* v. *Commissioner*, 177 F. (2d) 990, 38 A.F.T.R. 1008; *Scofield, Collector*, v. *Maurite*, (C.A. 5) 206 F. (2d) 135.

The Tax Court has decided many cases since the *Culbertson* decision that hold that a partnership based upon gift capital must be recognized. Included are the following cases involving gifts in trust for children: *Theodore D. Stern*, 15 T. C. 521; *Edward D. Sultan, et al.*, 18 T. C. 715 (July 3, 1952); *Thomas H. Brodhead, et al*, 18 T.C. 726 (July 7, 1952); *Chas. C. Parks*, ¶52,228 P-H Memo. T. C. *Roy Eaton*, ¶52,221 P-H Memo. T. C.; *Juliana Schroeder*, ¶52,000 P-H Memo. T. C.; *Louis R. Eisenmann*, 17 T. C. 1426; *Clarence B. Ford*, 19 T. C. 200 (decided in favor of taxpayer although prior years' cases decided before the *Culbertson* decision held against taxpayer); *Henry G. Miller*, ¶52,208 P-H Memo. T. C.; *John J. Cunningham*, ¶51,242 P-H Memo. T. C.; *Herbert Shainberg*, ¶53,068 P-H Memo. T. C.

United States District Court decisions have recognized partnerships including trusts as partners in the following cases: *Mary E. Osbrink, et al.*, v. *United States* (U.S.D.C. S.D. Cal.), ¶72,678 P-H Fed. 1952; *Bologna, et al.* v. *Donnelly* (U.S.D.C. E.D. La.), ¶72,550 P-H Fed. 1953; *Klein* v. *Riddell, Collector*, (U.S.D.C. S.D. Cal.), ¶72,511 P-H Fed. 1953; *Alton* v. *Kelm, Collector*, (U.S.D.C. Minn.), ¶72,581 P-H Fed. 1953; *Hoffman* v. *U. S.* (U.S.D.C. Ore.), ¶72,412 P-H Fed. 1954.

IV.

The case involves a question of public importance which should be settled. The problem of the taxation of family

partnerships has plagued taxpayers, the Internal Revenue Service, and the Courts for years. This Court, in the *Tower*[18] and *Lusthaus*[19] cases, announced what appeared to be clear-cut rules for settling the mass of litigation involving this question. However, lower Courts misconstrued the decisions and used them as authority for certain alleged "tests" of validity of family partnerships, particularly the tests of "vital services" and "original capital". In the *Culbertson* case, this Court disavowed these "tests" and made a further effort to quiet the law. Most Courts have accepted the reasoning of the *Culbertson* case, but a few Tax Court Judges and the Court of Appeals for the Fourth Circuit, while giving lip service to the *Culbertson* case, continue to refuse to recognize family partnerships for tax purposes because of failure to meet the "tests" of the *Tower* and *Lusthaus* cases.

The *Culbertson* case did not settle the law and family partnership litigation has continued to clutter up the Courts. This is shown by:

1. The *Culbertson* case has been cited in more than 450 cases up to February 25, 1954, according to the Prentice-Hall Federal Tax Citator. That Courts have been required to consider more than 450 cases involving principles of the *Culbertson* decision is truly appalling.

2. Congress became so concerned that, in the Revenue Act of 1951, it attempted to clarify the confusion. However, even that effort has not been successful. In many cases, such as the case at bar, some Tax Court Judges and the Fourth Circuit, refuse to recognize family partnerships in which gift capital is involved. In so doing, they do not even mention the legislative history of the 1951 Act and the excellent analysis of the law which appears in the Congressional Reports. Neither the Tax Court nor the Court of Appeals mentioned this legislation in disposing of the case at bar, although cited in taxpayers' briefs.

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[18] 327 U.S. 280.
[19] 327 U.S. 293, 34 A.F.T.R. 806.

This Court should once and for all settle the law of the taxation of family partnerships and relieve the Courts of the mass of litigation involving such partnerships.

Respectfully submitted,

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April 21, 1954

APPENDIX

Statutes Involved

Internal Revenue Code:

SEC. 181. PARTNERSHIP NOT TAXABLE.

Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity.

(26 U.S.C. 1946 ed., Sec. 181.)

SEC. 182. TAX OF PARTNERS.

In computing the net income of each partner, he shall include, whether or not distribution is made to him—

* * * * *

(c) His distributive share of the ordinary net income or the ordinary net loss of the partnership, computed as provided in section 183(b).

(26 U.S.C. 1946 ed., Sec. 182.)

SEC. 3797. DEFINITIONS.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

* * * * *

(2) *Partnership and Partner.*—The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture or organization.

(26 U.S.C. 1946 ed., Sec. 3797.)

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes and regulations involved	2
Statement	2
Argument	5
Conclusion	10
Appendix	11

CITATIONS

Cases:	
Alexander v. *Commissioner*, 190 F. 2d 753	9
Brodhead v. *Commissioner*, 18 T. C. 726	9
Commissioner v. *Brodhead*, 210 F. 2d 652	9
Commissioner v. *Culbertson*, 337 U. S. 733	5
Commissioner v. *Eaton*, 210 F. 2d 653	9
Commissioner v. *Sultan*, 210 F. 2d 652	9
Commissioner v. *Sunnen*, 333 U. S. 591	7
Commissioner v. *Tower*, 327 U. S. 280	5
Eaton v. *Commissioner*, decided July 9, 1952	9
Harrison v. *Schaffner*, 312 U. S. 579	7
Helvering v. *Clifford*, 309 U. S. 331	7
Helvering v. *Horst*, 311 U. S. 112	7
Lucas v. *Earl*, 281 U. S. 111	7
Lusthaus v. *Commissioner*, 327 U. S. 293	5, 7
Miller v. *Commissioner*, 203 F. 2d 350	8
Seabrook v. *Commissioner*, 196 F. 2d 322	8
Sultan v. *Commissioner*, 18 T. C. 715	9
Toor v. *Westover*, 200 F. 2d 713, certiorari denied, 345 U. S. 975	10
Visintainer v. *Commissioner*, 187 F. 2d 510	9
Statutes:	
Internal Revenue Code:	
Sec. 11 (26 U. S. C. 1946 ed., Sec. 11)	11
Sec. 22 (26 U. S. C. 1946 ed., Sec. 22)	11
Sec. 181 (26 U. S. C. 1946 ed., Sec. 181)	11

Statutes—Continued
Internal Revenue Code—Continued Page
Sec. 182 (26 U. S. C. 1946 ed., Sec. 182)..... 12
Sec. 3797 (26 U. S. C. 1946 ed., Sec. 3797).. 12
Revenue Act of 1951, c. 521, 65 Stat. 452, Sec. 340 (26 U. S. C. 1946 ed., Supp. V, Sec. 3797)..... 10, 12
Miscellaneous:
Treasury Regulations 111, Sec. 29.2 (a)-1..... 12–13

In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 707

HAROLD MAXWELL, SR., ESTATE OF RAYMOND MAXWELL SR., DECEASED, MARY CHARLES MAXWELL, ADMINISTRATRIX, ET AL., PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum findings of fact and opinion of the Tax Court (R. 1–15) are not officially reported. The opinion of the Court of Appeals (R. 74–77) is reported at 208 F. 2d 542.

JURISDICTION

The judgment of the Court of Appeals was entered on December 9, 1953. (R. 78.) Petitioners were granted an extension of time to April 23, 1954, within which to file a petition for a writ of certiorari; the petition was filed on April 21, 1954. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTION PRESENTED

Whether the Court of Appeals correctly held that the Tax Court, on the whole record, was warranted in concluding that the taxpayers Harold Maxwell, Sr., and Raymond Maxwell, Sr., and the trusts created by them were not engaged in conducting a mercantile business as partners during the taxable years, and in further concluding that the business income was taxable to the taxpayers under Section 22 (a) of the Internal Revenue Code.

STATUTES AND REGULATIONS INVOLVED

The applicable provisions of the statutes and Regulations involved appear in the Appendix, *infra*, *pp.* 11–13.

STATEMENT

The facts, as found by the Tax Court, may be summarized as follows:

Harold Maxwell, Sr., and Raymond Maxwell, Sr., herein referred to as the taxpayers, were brothers. Prior to December 1, 1941, they operated a wholesale grocery business as equal partners in New Bern, North Carolina, known as Maxwell Company. Harold Maxwell, Sr., had one son, Harold, Jr., and one daughter. Raymond Maxwell, Sr., had one son, Raymond Maxwell, Jr., and two daughters. In 1941, all of these children were minors. (R. 2–3.)

For a period of two years or longer prior to November 29, 1941, the partners discussed the

idea of giving to each of their children an interest in the Maxwell Company in order to provide for their future financial security, as well as to interest them in carrying on the business. On November 29, 1941, the partners each donated specified percentages of their undivided one-half interest in Maxwell Company to trusts which they created for the benefit of their minor children. At the same time, each conveyed and transferred by separate instrument specified percentages of their interest in the business to each of the trusts for a stated consideration in money to be paid by each trust. Each of the five deeds conveying the respective interests sold provided that the trustee of each trust should execute and deliver an interest-bearing promissory note in the amount of the consideration to be paid by each trust. The notes were dated November 29, 1941, and the interest and principal of each note was fully discharged during the year 1945 out of earnings and profits of the Maxwell Company distributed to the respective trusts. (R. 3-4.)

The five deeds of sale each provided that the additional interest acquired by purchase was to be subject to all the provisions contained in the five deeds of gift in trust. Each of the latter provided that the trust should terminate on December 31, 1955, at which time the trustee was directed to pay the undistributed income and corpus to the primary beneficiary, if living, and, if deceased, to

the surviving child or children of the respective donors. There was no gift over of the accumulated income and corpus in the event there were no living children of the donors at the time fixed for the termination of the trust. (R. 4–5.)

While capital was a material income-producing factor, the original partners, whose knowledge, skill and personal services largely contributed to the success of the business, continued to exercise the absolute control and management of the business without salary notwithstanding their lesser interests in the profits of the partnership. The two sons, Harold, Jr., and Raymond, Jr., worked in the business sporadically, after school hours or during vacations. The petitioners made no contention, however, that the sons' services were vital or of material significance. (R. 13.)

The instruments creating the trusts provided that the old partners consented to the admission of the trustees of the respective trusts as members of the partnership of Maxwell Company. No new partnership agreement was ever executed, nor does the record disclose any of the terms of any alleged oral agreement. The trustees never took an active interest in the partnership nor participated in any way in the control or management thereof, and made no decisions with respect to policy. The Maxwell Company continued to operate with the same capital and under the complete control and dominion of the two original partners. (R. 11.)

On the basis of all the facts, the Tax Court concluded (R. 12, 15) that the taxpayers did not, in good faith and acting with a business purpose, intend to join together with the trusts as partners in the conduct of the mercantile business carried on under the name of Maxwell Company, and upheld the Commissioner's deficiency determinations (R. 15). The Court of Appeals affirmed. (R. 78.)

ARGUMENT

(1) This case presents no question warranting further review by this Court. The decision below is in accord with *Commissioner* v. *Tower*, 327 U. S. 280, *Lusthaus* v. *Commissioner*, 327 U. S. 293, and *Commissioner* v. *Culbertson*, 337 U. S. 733. The ultimate test is "whether, considering all the facts * * * the parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise." *Commissioner* v. *Culbertson, supra*, p. 742. While no one circumstance is conclusive, failure of the alleged new partners to contribute "original capital," or to participate in "management and control of the business," or to perform "vital services," has the effect of placing "a heavy burden on the taxpayer to show the bona fide intent of the parties to join together as partners." *Commissioner* v. *Culbertson, supra*, p. 744. Here, both the Tax Court and the Court of Appeals observed (R. 4, 76) that whatever the trusts invested as "partners" came to them either

as gifts from the taxpayers, Harold and Raymond Maxwell, or by way of interests purchased from them and paid for out of partnership profits. Thus, none of the capital used in the business originated with the trusts which petitioners claim were business partners, or with the beneficiaries of the trusts.

The decision of the court below that no valid business purpose was shown for the creation of the alleged partnership and that the taxpayers did not in good faith intend to join together with the trusts as partners in the conduct of the business of Maxwell Company, did not rest on a ruling of law that gift capital can in no circumstances lead to the creation of valid family partnerships, as petitioners contend. (Pet. 15.) As plainly appears from the opinion of the court below (R. 76–77), this was only one of the factors which led it to conclude that there was neither business reality nor economic purpose in the alleged partnership with the trusts.

The lack of an intention actually to join together with the trusts in the present conduct of the business is also evidenced by the fact that the taxpayers, whose knowledge, skill and personal services largely contributed to the success of the business, continued to exercise control and management of the business without salary, notwithstanding their lesser interests in the profits of the partnership after they had disposed of substantial portions of their respective partnership

interests by gifts and conveyances to the trusts. (R. 4, 11, 13, 76.) The lack of any such intention is also evidenced by the fact that neither the trustees nor the beneficiaries performed any vital services. (R. 11, 13, 76.)

Thus, the petitioners were held to have failed to meet the "heavy burden" cast upon them to show a *bona fide* intent to conduct the business together with the trusts as genuine partners. On the contrary, the evidence clearly indicated that it was the taxpayers who supplied the necessary capital, performed the vital services, managed and operated the business, and thereby earned the income. Under well-settled principles, the taxpayers may not escape liability for the tax upon that income by any anticipatory assignment of such income within the family group. *Lucas* v. *Earl,* 281 U. S. 111; *Helvering* v. *Clifford,* 309 U. S. 331; *Helvering* v. *Horst,* 311 U. S. 112; *Harrison* v. *Schaffner,* 312 U. S. 579; *Commissioner* v. *Tower, supra; Lusthaus* v. *Commissioner, supra; Commissioner* v. *Sunnen,* 333 U. S. 591; *Commissioner* v. *Culbertson, supra.*

(2) There is no conflict with the decisions of other courts of appeals, as asserted by petitioners. (Pet. 8–14.) As this Court said in *Commissioner* v. *Culbertson, supra,* p. 743, the question whether the parties in good faith and acting with a business purpose intended to join together in the present conduct of a business is one of ultimate fact for the trial court. Each case, therefore, is

to be determined on its own facts, and the cases which petitioners assert to be in conflict with the decision below are distinguishable on their facts. Thus, *Miller* v. *Commissioner,* 203 F. 2d 350 (C. A. 6th), was distinguished by the court below (R. 77) on the ground that the trusts there acknowledged to be partners involved the "investment of new, outside capital." The court also noted that the Sixth Circuit found that the evidence in that case disclosed an intent on the part of the Millers, who operated a drug business, to join together with their children, or with themselves as trustees for their children, to form a real business partnership; among the factors that impressed the Sixth Circuit in the Miller case was the fact that the three children for whom the trusts were established were students at a pharmacy college, preparing to follow the business of druggists. As the court below stated, however, it was unable to find that the trusts here were established because of a desire to give the taxpayers' children an interest in the business and an incentive to engage in it. (R. 77.)

In *Seabrook* v. *Commissioner,* 196 F. 2d 322 (C. A. 5th), also cited by petitioners as being in conflict with the decision below, the requisite intent to form a *bona fide* partnership was shown, particularly by the fact that the recipients of the donated capital actively participated in the management and operation of the business.

Alexander v. *Commissioner*, 190 F. 2d 753 (C. A. 5th), and *Visintainer* v. *Commissioner*, 187 F. 2d 519 (C. A. 10th), applied the principle that the absolute right of control over both the property and the income therefrom which inheres in a valid legal title, resulting from a gift of the entire property, serves to render the donee rather than the donor liable for taxes on the income, even though the donor continues to manage and operate the business as he did before making the gift. Those cases did not involve family partnerships, and are not in conflict with the decision below.

Petitioners also assert conflict with three recent *per curiam* decisions by the Ninth Circuit, affirming decisions of the Tax Court, in *Commissioner* v. *Sultan*, 210 F. 2d 652; *Commissioner* v. *Brodhead*, 210 F. 2d 652, and *Commissioner* v. *Eaton*, 210 F. 2d 653.[1] In each of those cases it was held, *inter alia*, that trusts were bona fide members of a family partnership. In each case it was recognized that the question was factual, and that previously decided cases were not necessarily controlling. In an earlier case, for example, the Ninth Circuit had held that a combination of a trust and a limited partnership might serve as the means by which an assignor retained control over property which he had purportedly given away,

[1] Affirming respectively *Sultan* v. *Commissioner*, 18 T. C. 715; *Brodhead* v. *Commissioner*, 18 T. C. 726; and *Eaton* v. *Commissioner*, decided July 9, 1952 (1952 P-H T. C. Memorandum Decisions, par. 52.221).

and concluded that no real partnership existed. See *Toor* v. *Westover*, 200 F. 2d 713, certiorari denied, 345 U. S. 975.

Nor is there any merit to the contention (Pet. 17) that the decision below conflicts with Congressional understanding of the law. Section 340 of the Revenue Act of 1951 (Appendix, *infra*, p. 12), to which petitioners refer as having enlarged the definition of the term "partner" so as to include the trusts established by them, was made applicable only to taxable years beginning after December 31, 1950, and expressly provided that no inferences were to be drawn therefrom with respect to prior taxable years.

CONCLUSION

The decision of the court below is correct, and further review is not warranted. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 1954.

APPENDIX

Internal Revenue Code:

SEC. 11. NORMAL TAX ON INDIVIDUALS.

There shall be levied, collected, and paid for each taxable year upon the net income of every individual a * * * tax * * *.
(26 U. S. C. 1946 ed., Sec. 11.)

SEC. 22. GROSS INCOME.

(a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service * * *, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *
(26 U. S. C. 1946 ed., Sec. 22.)

SEC. 181. PARTNERSHIP NOT TAXABLE.

Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity.
(26 U. S. C. 1946 ed., Sec. 181.)

SEC. 182. TAX OF PARTNERS.

In computing the net income of each partner, he shall include, whether or not distribution is made to him—

* * * * *

(c) His distributive share of the ordinary net income or the ordinary net loss of the partnership, computed as provided in section 183 (b).
(26 U. S. C. 1946 ed., Sec. 182.)

SEC. 3797. DEFINITIONS.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

* * * * *

(2) *Partnership and Partner.*—The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture or organization.
(26 U. S. C. 1946 ed., Sec. 3797.)

Revenue Act of 1951, c. 521, 65 Stat. 452:

SEC. 340. FAMILY PARTNERSHIPS.

(a) *Definition of Partner.*—Section 3797 (a) (2) is hereby amended by adding at the end thereof the following: "A person shall be recognized as a partner for income tax purposes if he owns a capital interest in a partnership in which capital is a material income-producing factor, whether or not such interest was derived by purchase or gift from any other person."

* * * * *

(26 U. S. C. 1946 ed., Supp. V, Sec. 3797.)

Treasury Regulations 111, promulgated under the Internal Revenue Code:

SEC. 29.22 (a)–1. *What included in gross income.*—Gross income includes in general compensation for personal and professional services, business income, profits from sales of and dealings in property, interest, rent, dividends, and gains, profits, and income derived from any source whatever, unless exempt from tax by law. (See sections 22 (b) and 116.) In general, income is the gain derived from capital, from labor, or from both combined, * * *.

U. S. GOVERNMENT PRINTING OFFICE: 1954